

and in 1953
Richard G. Fenton

1953

Nov. 6

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CONCORD, N.H.

Mr. Elton E. Nelson, Chairman
New Hampshire Racing Commission
Nashua, New Hampshire

Dear Mr. Nelson:

Governor Gregg has referred to me the questions raised in Governor Leach's letter to you of October 29, 1953 as to the right of the Commission to Recommend Incorporation of Tax Structures. You should have certain information on file with the Racing Commission pursuant to the statute relative to the operations of and ownership of the New Hampshire Jockey Club. It is noted that R. I. c. 281, s. 12 provides that the annual applications of any corporation desiring to hold a race with pari-mutuel pools shall be signed, sworn to and shall contain, amongst other information, a statement of assets and liabilities and the names and addresses of directors and officers together with such other information as the Racing Commission may require.

The effect of this provision of the law is at least to inform the Racing Commission as to the ownership and financial structure of a corporate applicant for license. As such the information is not strictly a public record in the sense of involving a written record made by a public officer authorized to perform that function, nevertheless it is a quasi-public document required to be deposited with the Racing Commission by statute for the information of the Commission and any other governmental agency with a proper interest therein.

In my opinion, the Commission to Recommend Incorporation of Tax Structures is a proper governmental agency to examine the information on file with the Racing Commission with respect to the Jockey Club and that under settled principles of law with respect to the examination of such records it is entitled to have this information. Nothing in this opinion is considered to be contrary to the information rendered to the Commission on January 13, 1954 by the Honorable Francis

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W. Johnston, nor the opinion of Honorable Stephen M. Wheeler under date of February 4, 1943.

The New Hampshire Jockey Club was chartered by the State of New Hampshire in 1936 as a business corporation. As such, the common law conferred no right on any other than stockholders to examine the books and records of the corporation, and even the right of the stockholders was limited to inquiries in good faith. Cf. Fletcher, Cyclopedia of Corporations, Volume 5, sections 2218, 2246. However, under certain circumstances statutory authorization in derogation of this common law principle has been enacted and two illustrations of this are presented by the provisions of R. L. c. 274, s. 91 which provides that creditors of a corporation having an overdue and unpaid demand shall be entitled to inspect its records, accounts and papers at reasonable times and for legitimate purposes, and R. L. c. 171, s. 10 which requires that corporate applicants for licenses to run meets at pari-mutuel pools shall be compelled to furnish information as to its ownership and assets, et al, to the Racing Commission.

This statutory provision concerning the records of the New Hampshire Jockey Club antedated the charter of the Jockey Club. So far as I am able to discern, it is a valid statutory provision having to do with a matter affected with the public interest.

The Commission to Recommend Reorganization of Tax Structure was provided for in the 1953 Session of the Legislature by sections 5 and 6 of chapter 360. Its duty is to act as an advisory commission to cooperate with the Governor in the preparation of recommendations, legislation in substitution or revision of taxes assessed and collected by the State and by all political subdivisions thereof, or paid to any officer, agency or department of the State and to all political subdivisions thereof, if any such is deemed expedient. As such it is entitled to information on file with the Racing Commission which has a direct relation to recommendations which may or may not be made by the Langley Commission effecting legislative consideration of the relationship between the take of the Jockey Club and the take paid to the State of New Hampshire from pari-mutuel betting. Even though information with respect to applicants for licenses under section 10 may not be unlimited public records, the statute neither provides for public inspection nor prohibits it. Since the Langley Commission has an interest in the contents of the records insofar as they affect the overall question of the tax structure of the State of New Hampshire, it is entitled to examine these records.

I therefore respectfully advise you that the request of the Commission for this information should be acceded to by you but in so advising you I express no opinion concerning any right or lack of

Mr. E. W. Hoffman, Chairman

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right of the Langley Commission to make the information available to the general public. In any event, that does not appear to be your responsibility.

I am returning to you herewith Chairman Langley's letter of October 27, 1933.

Very truly yours,

Louis C. Wyman
Attorney General

LCW:W

C.C. Governor Gregg

THE STATE OF NEW HAMPSHIRE
COMMISSION TO RECOMMEND REORGANIZATION
OF TAX STRUCTURE

3 North State Street
Concord, N.H.

October 29, 1953.

Mr. Byron E. Redman, Chairman,
N. H. Racing Commission
Hampton, N.H.

Dear Mr. Redman:

I want to thank you and your associates for appearing before our commission to assist us in our task. Since that appearance we have reviewed our program and plan to set a date for a public hearing at which we wish the N. H. Jockey Club and any other interested citizens to appear. Before we do that, however, the Commission to Recommend Reorganization of the Tax Structure would like to be thoroughly informed itself, insofar as it possible, in order that it may most intelligently take evidence at a public hearing.

I believe we asked if you would send us financial statements of the Rockingham Race Track operations, which you promised to do. Thinking about this, it seems to me we should have annual operating statements for the calendar years 1951, 1952, and 1953 to date, as well as balance sheets for those periods. If the fiscal year of the corporation doesn't coincide with the calendar year statements for the years covering the last three meets, including 1953, are desired. We would like full, detailed statements, not brief consolidated statements. If statements to date for 1953 are not available, when could they be had?

Inasmuch as the problem which confronts us here is whether the state is receiving the maximum potential revenue from this source, we would like also to see copies of the corporation income tax returns made to the federal government for the same years.

Could you also provide our commission with enough copies of all rules and regulations your commission has issued under the law so that each of our nine-member commission could have a copy. I believe these are in printed form.

The Commission to Recommend Reorganization of the Tax Structure would also like a list of the stockholder owners of the N. H. Jockey Club, and their addresses, together with the number of shares each stockholder has, and, if possible, the date each acquired his stock.

Again thanking your commission for its courtesies, I remain

Yours sincerely,
/s/ James M. Langley
Chairman, Commission to Recommend Reorganization
of Tax Structure.